(2)

No. 04-1299

IN THE

Supreme Court of the United States

JULIO CESAR WILSON STAJANO, ET AL.,
PETITIONERS

v.

UNITED TECHNOLOGIES CORPORATION, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

APPENDIX TO REPLY BRIEF

PAUL C. MATTHEWS
Counsel of Record
54 Stone Street
New York, NY 10004
(212) 344-1936
Attorney for Petitioners

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 223-3160 ♦ USSCINFO.COM

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

NOTICE TO THE COURT ii

EXHIBITS 1ra

POINT XI 7ra

NOTICE TO THE COURT

POINT IX - THE MARITIME LAW APPLICABLE IN THIS LITIGATION WAS A PART OF THE 258 PAGE AFFIRMATION DATED NOVEMBER 26, 2001 IN OPPOSITION TO DEFENDANTS' MOTION TO AMEND, ET AL URGES THE MILITARY CONTRACTORS DEFENSE.

IT WAS THE FIRST DOCUMENT FILED OPPOSING DEFENDANTS' MOTION TO AMEND AND ADD MILITARY CONTRACTORS DEFENSE AND FOR SUMMARY JUDGMENT.

THE MOTION COURT TOTALLY IGNORED THE ISSUE OF MARITIME LAW ON A NAVAL HELICOPTER SPECIFICALLY DESIGNED TO PERFORM A MARITIME TASK WHICH IT WAS DOING AT THE TIME OF THE ACCIDENT.

THE AFFIRMATION AND EXHIBITS WERE PART OF THE RECORD ON APPEAL, PAGES 1609-3991.

EXHIBITS

EXHIBIT	DESCRIPTION
1	Summons & Verified Complaints; Defendants' Amended Verified Answers
2	El Dia Newspaper November 15, 1971, diagram of helicopter flying over bay
3	El Dia Newspaper, November 17, 1971, Diagram of helicopter striking embankment
4	Photograph of emergency pedal
5	El Dia Newspaper, November 15, 1971, photograph of Helicopters colliding
6	Sikorsky Seventy-Five Years of Aviation Firsts - Cover Page
7	November 19-21, 1952 - XHSS-1 Helicopter Mock-Up Review Board - pages 14 & 17
8	Forca Aerea Barsileira: Sikorsky SH-34J
9	1H11 - FAA Type Certification

10 Engineer Leon Jacobson's EBT - January 26, 2001, p. 312

11 Engineer Leon Jacobson's EBT - January 26, 2001, p. 312-315

12 Engineer Leon Jacobson's EBT - January 26, 2001, p. 160-161

13 Engineer Leon Jacobson's EBT - January 26, 2001, p. 11

14 Engineer Leon Jacobson's EBT - January 26, 2001, p. 11 & 155

15. Engineer Leon Jacobson's EBT - January 26, 2001, p. 156, 312 & 315

16. From Engineer Leon Jacobson's EBT - re: his employment

17. Choctaw, page 45-46 - H-34

18 Engineer Leon Jacobson's EBT - January 26, 2001, pp. 18-20

19 Janes All the World Aircraft - pages 193-209

20 Choctaw, pages 45-46 - H-36

21 Janes All the World Aircraft - pp. 193, 217, 221

22	Engineer Leon Jacobson's EBT - January 26, 2001, pp. 142 & 145
23.	Helicopter - pp. 215-222
24.	Choctaw - pp. 34, 40, 41.
25	Trial Testimony of Peter Sevenoff - San Diego, California, May 20, 1981 - pp. 1624-1628
26	Dr. Waldron Affidavit and Attachments with annexed exhibit Sikorsky Aircraft FAA Approval Rotocraft Cargo Sling Supplement No. 1 - August 2, 1956
27	Detail Specification HUS-1 - Jacobson's affidavit
28	December 8, 1954 Sikorsky Letter - 4127320
29	SH34G Parts Breakdown Manual
30	Three Photos of Hook
31	Blueprint of Hook
32	FAA Helicopter Accident Report
33	deleted
34	DD-250

35	Sikorsky Plant Arrangement
36	Sikorsky Personnel List
37	Letter dated October 30, 1958
38	Attorney Kevin Cook Transcript - pp. 53,54
39	October 19, 1959 Letter - Ser Z/1814-C1
40	Attorney Cook's Good Faith Affirmation
41	U.S. Navy HSS-1 - Standard Aircraft Characteristics Bates 8034 - attached to Engineer Jacobson's affidavit
42	May 1, 1959 letter - Sikorsky
43	HSS-1 Detail Specs Attached to Engineer Jacobson's affidavit
44	HSS/HUS Aircraft Service Change No. 37
45	Jacobson's Affidavit - Change 84 - Bates 1669-2266
46	Naval Speed Letter dated November 12, 1959 - ASC#84

47	Naval Speed Letter September 21, 1959 - ASC#84 Trial Installation
48	Sikorsky letter dated January 19, 1959
49	February 2, 1959 Bureau of Aero - Sikorsky
50	June 26, 1958 - Accident Report
51	Sikorsky Aircraft - June 27, 1958
52	Sikorsky letter to BAR regarding Brouillette of Engineering Department
53	May 1, 1959 Sikorsky Retrofit Kits
54	Change Order 25, September 20, 1956
55	January 20, 1959 re: windows
56	October 29, 1956 Contract Change
57	Sikorsky H-34 pp. 76-81
58	June 27, 1958 - SSD-1-3183 re: Service Support of the HSS-1N
59	List of known naval repair facilities
60	Robert Nokes affidavit

61 Appendix A - H-34

POINT XI

THE TRIAL COURT MUST IMPOSE GENERAL MARITIME LAW IN THIS DISPUTE WHEN A JURY IN A BIFURCATED TRIAL DECIDES THAT THE ACCIDENT BEGAN OVER WATER AND CULMINATED ASHORE

The Military Contractors Defense which is a "common law" cause of action, in this instance must be displaced by General Maritime Law, because it conflicts with same.

Whenever state law or federal common law conflicts with General Maritime Law it must be displaced by the latter.

Some of the earlier decisions in the State of New York resolved conflicts between Federal Maritime Law and state law to the favor of Federal Maritime Law.

One of the earlier decisions determined that when a maritime tort occurs in navigable waters, state law is therefore inapplicable and the General Maritime Law of the United States applies, see **Panama Railroad Co. v. Johnson,** 264 U.S. 375 (1924); **Garrett v. Moore-McCormack Co., Inc.**, 317 U.S. 239,243-245 (1942); **Riley v. Agwilines Inc.**, 296 N.Y. 402 (1947, in which the Court of Appeals of the State of New York held at pages 405-406 that in litigation involving the validity of a seaman's general release, a shipowner proponent of said release has the burden of proof, of showing that the release is valid, which is polar opposite of state procedural practice:

> "Since it is beyond the power of the State by legislation or judicial decision to mold or modify the maritime law (Knickerbocker Ice Co. v. Stewart, 253 U.S. 149), we must look to the decisions of the Federal Courts to define the liabilities of shipowners for maritime torts, leaving out of consideration decisions of our own courts or statutes of the State which conflict with the rules of liability established in the Federal Courts (Robins Dry Dock & Repair Co. v. Dahl, 266 N.Y. 499, overruling Malleny v. Standard Shipbuilding Corp., 237 N.Y. 250.)"

Riley was followed and cited in **McFall v. Compagnie Maritime Belge**, 304 N.Y. 314 (1952) which dealt with issues of Federal Maritime Law concerning an injury to a maritime worker (longshoreman) aboard the defendant's vessel and provided primacy to Federal Maritime Law.

Thereafter, another action called **Celeste v. Prudential Steamship Company**, 35 NY2d 60, 358 NYS2d 729, the statute of limitations and procedural practice was forced to yield to Federal Maritime Law, though the action was tried in a court in the State of New York.

Fairly recently in **Lerner v. Karageorgis**, 66 NY2d 479 (1985) at pp. 484-485 our highest court in the State of New York displaced state law in a dispute between state procedural law and Federal Maritime Law, state procedural law was compelled to be displaced by Federal maritime law:

> In maritime cases, State courts must apply Federal law "to secure a single and uniform body of maritime law" (Matter of Rederi [Dow Chem. Co.], 25 NY2d 576,581, cert denied 398 US939; see also, Ugarte v. United States Lines, 64 NY2d 836, rearg denied 64 NY2d 1041; Alvez v American Export Lines, 46 NY2d 634, affd 446 US 274). A State court may not limit a party's substantive rights by applying its own procedural rules if those rules would "significantly affect the result of the litigation, i.e., would be outcome determinative" (Matter of Rederi [Dow Chem. Co.], supra, at p 581). Thus CPLR 4544, which is a rule of evidence may not be employed to nullify a contractual limitation enforceable under Federal maritime law.

In **Public Administrator of the County of New York, as Administrator of the Estate of Famuel Dias de Souza v. Frota Oceanica Brasileira, S.A., et al.**, N.Y.L.J., 10/7/81, p. 13, col. 5, Justice Greenfield dispensed with the New York State General Obligations Law and recognized that Federal Maritime Law was superior with regard to a seaman's release under **Garrett, supra** when both conflicted:

> The motion is based on General Obligations Law Sec. 15-108 which deals solely with the effect of a release given to one or more persons liable or claimed to be liable in tort on claims for the injury against other tort

feasors. The statute is irrelevant to the issue of whether releases given by widows of seamen who were lost at sea when the S.S. Sylvia L. Ossa went down are a defense to the claims brought by the Public Administrator. Moreover, the New York law does not govern the issue of releases in maritime cases, Garrett v. Moore-McCormack Co., 317 U.S. 239 (1942). (Emphasis added)

In **Rogers v. City of New York**, 46 Misc. 2d 373,259 N.Y.C. 22d 607 (Special Term, New York County, 1965)at pages 374, 375, the issue of the Admiralty doctrine of laches arose as to whether it bars the action. Special term, New York County disposed of it as follows:

"It is settled that the rights and liabilities of the parties in connection with a maritime tort depend upon and arise out of maritime law (Spencer Kellogg & Sons v. Hicks, 285 U.S. 502) Plaintiff's rights are rooted, not in State law, but in Federal maritime law. Jurisdiction of this court over the action rests upon the so-called 'saving-to-suitors clause' of the Judiciary Act of 1789 (see 1 Benedict, Admiralty (5th ed) sec. 22). When the State opens its courts to this type of action, which the Constitution has placed under national power to control in 'its substantive as well as procedural features' (Panama R.R. Co. V. Johnson, 264 U.S. 375, 386), our courts must afford plaintiffs the full benefit of Federal law (Garrett v. Moore McCormack Co., 317 U.S. 239).

> Even if plaintiffs are seeking to enforce State created remedies for this right, Federal maritime law is controlling (Pope & Talbot v. Hawn, 346 U.S. 406,409). Were this an action between private suitors, plaintiffs' Federal substantive admiralty rights could not be defeated simply by the mechanical application of a State Statute of Limitations, on the 'admiralty side' or the 'law' side of Federal court or in a state court having jurisdiction to enforce Federal maritime rights (Pope & Talbot v. Hawn, supra; p. 411, Kermaree v. Compagnie Generale, 357 U.S. 625; Garrett v. Moore McCormack Co., supra; Chelentis v. Luchenbach S.S. Co., 247 U.S. 372; see, also Larios v. Victory Carriers, 316F.2d 63 (C.A. 2d 1963).

And thereafter Special Term in New York County finding that Federal Maritime Law is equitable it ordered a hearing on the issue of "collateral sources" as to whether [they] have any effect on diminishing or reducing a jury verdict.

Federal Maritime Law prohibits same and dispensed with the effect of reducing a jury verdict through the use of a collateral source, **Eichel v. New York Central R.R.**, 375 US 253 and proceeded through **Haughton v. Blackships, Inc.**, 462 F.2d 788, 790 (5th Circ. 1972), 1972 AMC 1923, 1926; **Gypsum Carrier, Inc. v. Handelsman**, 307 F.2d 525,534 (9th Circ. 1962), 1963 AMC 175, 187; **Omi Yukon Limitation Proceedings (Connecticut National Bank v. Dufy)**, 733 F. Supp. 14 (SDNY 1990), 1990 AMC 2275 at 2281; **East River**

Steamship v. Transamerica DeLaval Steam Turbine, 476 U.S. 858(1986); 106 S.Ct. 2295,90 L.Ed 865, and

The Supreme Court in **Monessen Southwestern R. Co. v. Morgan**, 486 U.S. ____, 108 S.Ct. 1837, 100 L.Ed. 2d 349, (1988), a Pennsylvania procedural matter which clashed with the method of calculating interest for future pain and suffering in a Federal Employee Liability (FELA) case. The Court stated on page 1850:

> This reading of the statute comports with the congressional intent to provide liberal recovery under the FELA. Of course, by applying rule 238 of the Pennsylvania Rules of Civil Procedure, the state trial court went further and allowed prejudgment interest on appellee's general verdict, including interest on appellee's damages for pain and suffering and future losses, which are not appropriate objects for a compensatory award of prejudgment interest.

On page 2446 the Supreme Court ruled that "though the statute was procedural it was outcome determinative":

> The trial judge in this case believed that the choice among methods of calculating present value was a procedural issue, and she "blindly applied the total offset method [of] Kaczowski v. Bolubasz,491Pa. 561,421 A. 2d 1027 (1980)." 513 Pa. 86, 100, 518 A. 2d 1171, 1178 (1986) (dissenting opinion below); see also TR. 577-578.

Causation in Federal Maritime Law cases is featherweight, see **Landry, Admx. v. Two R. Drilling Co., et al.**, 517 F.2d 675, 1975 AMC 2135 (5th Cir 1975); **Milos v. Sea-Land Service, Inc.**, 478 F. Supp. 1019 (SDNY 1979), affirmed 622 F.2d 574; **Bowden v. United States**, ____F. Supp. ____ (ED Va. 1979), 1982 AMC 2064; **Davis v. Hill Engineering**, 549 F.2d 314 (5 Gr. 1977), 1977 AMC 1090; and **Matthews v. Ernest Russ Steamship Co.**, 603 F.2d 677.

State practice requires causal connection in a land tort matter with the absolute requirement that a physician must testify as to supporting causal connection.

This rule of law is opposite in a Federal Maritime law case of **Sentilles v. Inter-Caribbean Shipping Company**, 361 US107 (1959), 1960 AMC 10, it is not required to have a doctor testify in order to prove causal connection. No physician is required to testify to anything with regard to causal connection.

See **Sentilles, supra**, Supreme Court of the United States; **Fitzgerald v. A.L. Burbank & Co.**, 451 F.2d 670, 1972 A.M.C. 207.

Maritime Law is international in scope, **Lauritzen v. Larsen** 345 U.S. 571, 73 S.Ct. 921, and it was referred to and relied upon in a treaty discussion in which the Supreme Court in **Vaughan v. Atkinson**, 369 US 527 (1962)) mentioned how the impact of a treaty encompassing maritime law affects other Federal Maritime Law and Federal Statutory and Common Law, **Romero v. International Terminal Operating Co.**, 358 U.S. 354, 79 S.Ct 468; 1959 AMC 832 (1959).

The jury trial in this case must be bifurcated and the first issue to be determined by the jury will be the issue of the factual basis for maritime law. See the Decision of Appellate Division, affirmed June 27, 2000 (273 AD2d 162, 711 NYS 2d 711).

Therefore, it is this plaintiffs' position herein, that the jury will determine issues of fact that the General Maritime Law pertains to this case.

In the event of a conflict between General Maritime Law and "Military Contractors Defense", the latter must be displaced by the General Maritime Law to adopt a tort law as administered by the trial judge.

It is plaintiffs' position that in a bifurcated trial the first issue sent to the jury for their determination is whether the facts initially presented constitute facts sufficient upon which to base a cause of action under General Maritime Law.

The General Maritime Law is predicated upon the situs of the accident helicopter, over water, at the beginning of the accident and its culmination over land, when and where accident terminated.

See 1. Drawing extracted from El Dia newspaper showing the path of the helicopter over water **(Exhibit 2)**;

2. Jeep on the return striking the embankment after it was destabilized **(Exhibit 3)**; and,

3. Drawing showing the accident helicopter landing ashore **(Exhibit 4)**.

At the point when the jeep came ashore, that is the culmination and this imposes International Maritime Law.

The court in this bifurcated case must impose General Maritime Law which is superior to statutory federal law.

See **Grubart v. Great Lakes Dredge & Dock Co.**, 513 U.S. 527, 1995 AMC 913 (1995; **Sisson v. Ruby**, 497 U.S. 358 (1990), 1990 AMC 1801; **Brown v. Eurocopter**, 387 F. Supp. 2d 515 (S.D. Tex. 1999), 1999 AMC 1949; **Williamson v. Petroleum Helicopter**, 32 F. Supp. 2d 456 (S.D. Tex. 1999), 1999 AMC 1404; **In re Amtrack Sunset Limited**, 1997 AMC 2962 (11 Cir. 1997) (Admiralty Extension Act, 46 U.S.C. app. § 740 (1975); **Walther v. Hell's Canyon Adventures, Inc.**, 1997 AMC 2098 (D. Ore. 1997); **McDonald's City of New York**, 1997 AMC 868 (Sup.Ct., App. Div., N.Y.2d Dept. 1996); **Coats v. Penrod Drilling Corp.**, 61 F.3d 1113 (5 Cir. 1995), 1996 AMC 1; **McClenahan v. Paradise Cruises, Ltd.**, 1995 AMC 1899 (D. Hawaii 1995).

WHEREFORE, it is respectfully requested that defendants motion be denied in all respects and that the court grant such other, further and different relief as it deems just and proper.

Affirmed this 26th day of November, 2001

_____

KENNETH HELLER